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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 869.

SAMUEL ASARO,
PETITIONER,

v.

CARLO PARISI,
RESPONDENT.

BRIEF OF RESPONDENT IN OPPOSITION TO WRIT OF CERTIORARI

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To the Honorable, the Chief Justice and the Associates Justices of the Supreme Court of the United States:—

Respondent, Carlo Parisi, respectfully prays that a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit, affirming the judgment of the United States District Court for the District of Massachusetts be denied.

I.
Suggestion of Mootness

The respondents suggest that there is mootness in the petition for a writ of certiorari.

II.
Reasons for the Suggestion of Mootness

The jury never reached the point of consideration of contributory negligence relating to the claim of liability based on unseaworthiness.

III.
Statement of the Case

The petitioner, a member of the crew of a fishing vessel, was injured in the course of his employment when he undertook to hoist a heavy net from a wharf, where the vessel was moored, in Gloucester, Massachusetts, to the deck of the vessel by means of a gilson. His complaint set forth three counts, one for negligence under the Jones Act, a second for unseaworthiness under the general maritime law, and a third for maintenance and cure. The first two counts were tried by a jury, a special verdict by direction. Specific questions were submitted to the jury by the court without objection. In answer to these, the jury found that the respondent had been negligent and that the negligence was a proximate cause of the petitioner's injuries; that the respondent's vessel was unseaworthy, but that its unseaworthiness was non-causal, that the petitioner's own negligence had contributed to his injuries to the extent of 75%. The petitioner appealed from the jury's verdict on the finding of contributory negligence, predicating his appeal on the failure of the trial court to correctly instruct the jury on the issue of contributory negligence.

The petitioner was ordered by the mate to assist in hoisting the vessel's net from the dock to the deck. (R.A. p. 13) He was told to use the gilson at the port drumhead of the winch for that purpose. (R.A. p. 13) Crew members on the wharf secured the net and passed the words to hoist the

net. (R.A. p. 14) Upon such word from another crew member, the petitioner started the hoist and swung the net over the deck. Two other crew members stood on the deck to receive and guide the net to its stowing position. (R.A. p. 15) At this point a steel spur on the gilson pierced his right hand, causing him to let go with that hand. (R.A. pp. 15, 16) With only his left hand he was unable to keep sufficient strain on the gilson. (R.A. p. 16) Fearful of the safety of the crew members standing under the net, he again took hold of the gilson with his right hand to slow it down. (R.A. p. 16) The gilson ran through his hands until his left hand caught on the ends of an untaped splice and he was thrown on the deck against a bar. (R.A. p. 16)

The trial court instructed the jury as to the shipowner's duty under the Jones Act and the general maritime law, on causation, on the lack of defense of assumption of risk, and on the import of the petitioner's own negligence. (R.A. pp. 90-107, 115, 117) The petitioner objected to a portion of the trial court's instructions. (R.A. p. 116) To specific questions submitted to the jury, the jury found that the defendant was negligent, and the negligence caused the plaintiff's injuries; that the defendant's vessel was unseaworthy, but that the unseawofthiness did not cause the plaintiff's injuries; and that the plaintiff was guilty of 75% contributory negligence. (R.A. pp. 3 and 4)

The petitioner appealed the verdict of the jury to the United States Court of Appeals for the First Circuit which held that there was no error and affirmed the judgment of the District Court.

IV.
Argument

The jurys in returning answers to the specific questions submitted by the trial court found that there was unsea-

worthiness but that it was non causal. They, therefore, never reached the point of consideration of the portion of the instructions of which the petitioner complains relative to the contributory negligence of the petitioner in relation to the unseaworthiness liability.

V.
Conclusion

Wherefore, the respondent respectfully submits that the ruling of the court below is correct and that certiorari should be denied.

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